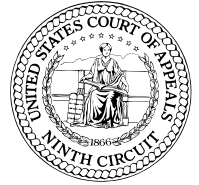




Office of the Clerk
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
95 Seventh Street
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San Francisco, California 94119-3939



Molly Dwyer
Clerk of Court

(415) 355-8000

June 16, 2008

**NOTICE AND OPPORTUNITY FOR COMMENT ON
PROPOSED AMENDMENTS TO THE CIRCUIT RULES**

Pursuant to 28 U.S.C. § 2071(b), comments are invited on proposed amendments to the following circuit rules and committee advisory note:

Circuit Rules 11-4.1 and 13-3. Tax Court Record

Circuit Rules 15-4 and 28-2.4(b). Petitions for Review/Contents of Briefs

Circuit Rule 27-10. Motions for Reconsideration

Circuit Rule 28-2.7.. . . . Statutory Addendum

New language is underscored; abrogated language is stricken. Please direct comments to Molly C. Dwyer, Clerk of Court at Molly.Dwyer@ca9.uscourts.gov, no later than **July 16, 2008**.

* * * * *

**Circuit Rule 11-4.1
Retention of Clerk's Record in the District Court**

Except as noted below, in all civil cases where excerpts of record are to be filed with the Court of Appeals pursuant to Circuit Rule 30-1, the entire clerk's record shall be retained in the district court unless requested by the Court of Appeals. This provision shall not apply to ~~Tax Court cases or . . .~~

Circuit Rule 13-3
Transmission of the Record in Tax Court Cases

The record shall be retained in the tax court unless requested by the Court of Appeals. If a judge or staff member of the Court of Appeals at any time requires the record, the judge or staff member shall, through the Clerk, request the record from the tax court. The tax court clerk shall transmit the record to the requesting judge or staff member within ten (10) days of receiving the request.

Purpose of Amendment: To conform treatment of tax court records with procedures governing other civil appeals.

Circuit Rule 15-4
Petitions for Review of Board of Immigration Appeals Decisions

A petition for review of a Board of Immigration Appeals decision shall state whether petitioner:

(a) is at liberty or is detained in the custody of the Department of Homeland Security;

 (b) has moved the Board of Immigration Appeals to reopen; and/or has applied to the district director for an adjustment of status

 (c) if known, is eligible for adjustment of status, and how petitioner meets the applicable eligibility requirements. A statement of eligibility for adjustment of status shall be supported by copies of the filed visa petition, the visa petition approval or receipt notice, and proof of grandfathering for those claiming eligibility on the basis of a prior petition. If such documentation is not currently available, petitioner shall state why, and when the documentation can be furnished to the Court.

The petition shall be filed in an original and seven copies and shall include petitioner's alien registration number. A copy of the Board of Immigration Appeals disposition shall be attached to the petition.

Circuit Advisory Committee Note to Rule 15-4

The provisions pertaining to a statement of eligibility for adjustment of status are not intended to supersede existing applicable procedures that govern the manner in which to seek relief before the agency.

Circuit Rule 28-2 Contents of Briefs

...

28-2.4 Bail/Detention Status

...

(b) The **petitioner's** opening brief in a petition for review of a Board of Immigration Appeals decision shall state whether petitioner is: (1) at liberty or detained in the custody of the Department of Homeland Security; (2) has moved the Board of Immigration Appeals to reopen and/or (3) is eligible for adjustment of status, and how petitioner meets the applicable eligibility requirements. A statement of eligibility for adjustment of status shall be supported by copies of the filed visa petition, the visa petition approval or receipt notice, and proof of grandfathering for those claiming eligibility on the basis of a prior petition. If such documentation is not currently available, petitioner shall state why, and when the documentation can be furnished to the Court. Government counsel may include any additional available information regarding detention and adjustment of status issues in the government's answering brief.

Purpose of Amendments: To elicit information regarding the pendency of any meritorious application for a status adjustment that would make the case a suitable candidate for court mediation; additionally, to (1) include the alien registration number, so as to provide a link to agency level proceedings, (2) supply the court with a copy of the Board's disposition, and (3) include an affirmative statement regarding petitioner's custody status, which permits the Court to prioritize calendaring of detained immigrants' cases.

Circuit Rule 27-10

Motions for Reconsideration

(a) Filing for Reconsideration

(1) Orders that terminate the case

_____ A party seeking further consideration of an order that disposes of the entire case on the merits, terminates a case, or otherwise concludes the proceedings in this court must comply with the time limits and other requirements of FRAP 40 and Circuit Rule 40-1.

(2) All other orders

Unless the time is shortened or enlarged by order of this court, a motion for clarification, modification or reconsideration of a court order that does not dispose of the entire case on the merits, terminate a case or otherwise conclude proceedings in this court must be filed within fourteen (14) days of the date of the order, ~~except a prisoner not represented by an attorney shall have twenty-eight (28) days.~~

(3) Required showing

A party seeking relief under this rule shall state with particularity the points of law or fact which, in the opinion of the movant, the court has overlooked or misunderstood. Changes in legal or factual circumstances which may entitle the movant to relief also shall be stated with particularity.

Purpose of amendment: To conform the time limits for motions for reconsideration of dispositive orders to the time limits governing petitions for rehearing.

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Circuit Rule 28-2.7 Addendum to Briefs

Pertinent constitutional provisions, treaties, statutes, ordinances, regulations or rules must be set forth either in the body of the brief verbatim and with appropriate citation following the statement of the issues presented for review or in an addendum introduced by a table of contents and bound with the brief or

separately; in the latter case, a statement must appear in the body of the brief referencing the addendum. If this material is included in an addendum bound with the brief, the addendum must be separated from the body of the brief (and from any other addendum) by a distinctively colored page. If it is repeated, a statement must appear under this heading as follows: "[except for the following], all applicable statutes, etc., are contained in the Brief or Addendum for _____."

Circuit Advisory Note to Rule 28-2

_____. . . .

The parties are encouraged to be thorough in including all materials described in Rule 28-2.7. Materials that may be discussed during oral argument are particularly helpful to the Court. While the rules provide format options consistent with those set forth at FRAP 28(d), the Court prefers that the authorities be furnished in an addendum appended to the brief unless the quantity of material mandates a separate volume.